IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 390 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

MALJI @ MALIO @ RAMESH NATHU BARGOT

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR LR POOJARI, ASSISTANT GOVERNMENT PLEADER

for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/02/99

ORAL JUDGEMENT

Through this writ petition under Article 226 of the Constitution of India the petitioner has challenged the detention order dated 11.7.1998 passed by the Police Commissioner, Ahmedabad, under section 3(2) of the Prevention of Antisocial Activities Act (for short

'PASA') and has prayed for his immediate release.

From the grounds of detention it appears that two cases of theft etc. were registered against the petitioner in the year 1995 and another case of attempt to commit murder was registered in the year 1998. Besides these, two confidential witnesses in their statements dated 2.7.1998 and 9.7.1998 narrated two incidents and on the aforesaid material the Detaining Authority reached subjective satisfaction that the petitioner is dangerous person within the definition of section 2(c) of the PASA and his activities were prejudicial for maintenance of public order. Accordingly, the impugned order of detention was passed.

This order has been challenged in this writ petition on four grounds.

One of the grounds is that there has been delay in passing the detention order as computed from the date of registration of last offence. This ground has absolutely no force. The last offence C.R.No.155/98 under sections 307 and 394 etc. was registered on 19.3.1998, whereas the detention order was passed on 11.7.1998. In between two confidential witnesses were examined by the Sponsoring Authority on 2.9.98. Unless the entire material was placed by the Sponsoring Authority before the Detaining Authority, no order of detention could be passed. Since the entire material was made available to the Detaining Authority only on 9.7.98, or shortly thereafter, and since the detention order was passed on 11.7.1998, it cannot be said that the detention order suffers from vice of delay.

The next contention is that the representation dated 5.11.1998 sent by the Advocate of the petitioner through Registered A.D. Post has not been considered by the State Government sofar. No counter affidavit has been filed by the State Government rebutting this ground. Considering the ground no.(e) of the writ petition, the learned Assistant Government Pleader has informed that the said representation was received by the State Government. Thus, the factum of receipt of representation by the State Government is not denied by the learned Assistant Government Pleader. He further informed that thereafter, it was forwarded to the Home Department but till date the representation has not been received in the Home Department. Some inquiry has been set up but the result or progress of inquiry is not known to the learned Assistant Government Pleader. The fact, therefore, remains uncontroverted that the representation

dated 5.11.1998 sent by the petitioner through his Advocate has not been decided by the State Government till date. This delay in disposal of the representation has rendered the detention order and continued detention of the petitioner illegal. On this count alone the writ petition can succeed.

The next contention has been that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order. The learned Assistant Government Pleader has contended that the registration of three cases and the statements of two confidential witnesses furnished ample material before the Detaining Authority to arrive at subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. This contention cannot be accepted from the material available on record.

Two registered offences of 1995 became stale in as much as the impugned order was passed on 11.7.1998. Moreover, in the grounds of detention, it is not disclosed that on those two occasions in the year 1995, the activities of the petitioner were prejudicial for maintenance of public order.

The third incident is of 19.3.1998 on account of which the case under sections 307, 394 and 120B of IPC was registered. Brief narration of the incident dated 19.3.1998 has been given in the grounds of detention. On the face value, this incident seems to be alarming. But as this incident occurred inside the house of the victim alarm, panic and fear remained confined in the house of the victim and it did not affect public at large or any member of the public in the surrounding area. Consequently, this activity though serious in nature could not be said to have affected the maintenance of public order.

Then remains the statements of two confidential witnesses. On the face value of the statements of these two witnesses, it can be said without any fear of contradiction that these activities on those two occassions on 13.5.1998 and 17.5.1998 were neither capable of disturbing public order nor the same actually disturbed public order. Members of the public were not beaten in either of these two incidents. Nature of beating to witness no.1 is not specified nor the nature of injury is disclosed. So is the case with witness no.2. On these two statements it cannot be said that the activities of the petitioner on those two occasions were prejudicial for maintenance of public order. As such,

the impugned order of detention is rendered invalid on this ground also.

The last ground is that the detention order seems to be punitive in nature and not preventive. From the grounds of detention it appears that the petitioner was in judicial custody in connection with C.R.No.155/98 when the detention order was passed. The Detaining Authority was aware of the fact that the petitioner was in judicial custody. In face of this awareness the Detaining Authority was not prohibited from passing the detention order but he should have satisfied himself from fresh and cogent material that on being released on bail the petitioner was likely to indulge in activities of similar nature. No doubt, in the earlier two cases of 1995 the petitioner was enlarged on bail and still he committed identical offence in the year 1998. From this material some inference could be drawn by the Detaining Authority that the petitioner may indulge in similar activities, if enlarged on bail. But on the facts and circumstances of the case, there was no possibility of petitioner's being enlarged on bail even by this Court on or before 11.7.1998 when the detention order was passed. From para 10 of the counter affidavit of the Detaining Authority and submissions made by the learned Counsel for the petitioner, it appears that the petitioner was arrested in connection with C.R.No.155/98 on 20.5.1998. He applied for bail. Bail application was rejected by the concerned Court on 11.6.1998. Thereafter, he moved bail application in this Court which was subsequently withdrawn on 29.6.1998. This Court granted liberty to the petitioner to file fresh bail application after the chargesheet is submitted in C.R.No.155/98. The grounds of detention show that on the date the grounds were formulated, the aforesaid case was still under investigation. Since the chargesheet was not submitted, till then, there was no possibility or likelihood of the petitioner's moving fresh bail application before this Court. If the petitioner was already in judicial custody and there was no likelihood of his being enlarged in nearfuture the subjective satisfaction of the Detaining Authority stands vitiated. This is another ground for rendering the impugned order of detention illegal.

For the aforesaid three reasons the detention order cannot be sustained. The writ petition, therefore, succeeds and is hereby allowed. The impugned order of detention dated 11.7.1998 is hereby quashed. No order for immediate release of the petitioner is passed in this petition because of his own showing he is still in judicial custody in connection with C.R.No.155/98.

Sd/-
(D.C.Srivastava, J)

m.m.bhatt